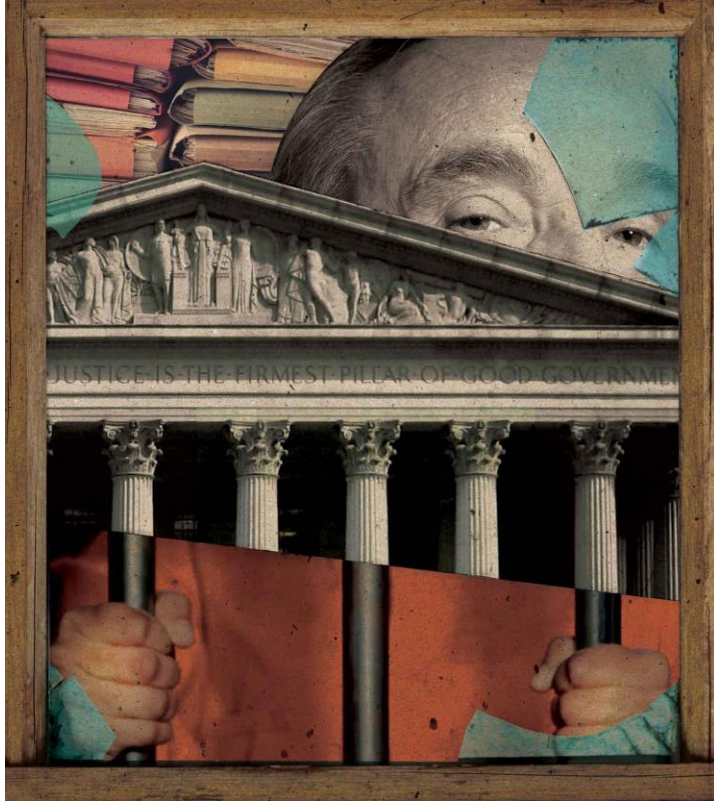


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# How the Courts Perpetuate Broken-Windows Policing Down the Chain

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New York City's infamous explosion of misdemeanor arrests over the past 20 years can be traced back to a single eight-page document: "Police Strategy No. 5." Developed in the summer of 1994 by then-Police Commissioner Bill Bratton, the strategy outlined how the theory of "broken windows" policing should be implemented in the city to "reclaim" its public spaces.

"New Yorkers have for years felt that the quality of life in their city has been in decline," the document warned. The solution? "By working systematically and assertively to reduce the level of disorder in the city, the [New York Police Department] will act to undercut the ground on which more serious crimes seem possible and even permissible." The idea, which was first proposed by social scientists George Kelling and James Wilson a decade earlier, was basically that "if you take care of the little things, then you can prevent a lot of the big things," as

Bratton summarized it when Mayor Bill de Blasio reappointed him to helm the NYPD in 2014.

Fixing the little things before they become big things may sound like common sense, but what Bratton's program meant in practice was a sharp rise in misdemeanor arrests—from 65,000 in 1980 to a high of 251,000 in 2010—the majority of which have been for marijuana possession and other minor offenses like jumping a subway turnstile or selling water on the street without a license. Despite Bratton's assertion that broken-windows policing would help reclaim the city, very little evidence suggests that it actually worked or had anything to do with the drop in New York's violent-crime rate, which was part of a nationwide trend that began in 1991.

Even more troubling is what it clearly has done, which has been to target minority communities overwhelmingly. Perhaps the most emblematic example in recent memory of the racist consequences of such a policy occurred in 2014, when a black man named Eric Garner was killed in a choke hold by police after

they approached him on suspicion he was selling loose cigarettes on the street. Garner's death renewed calls to end the insidious practice of sweeping people up for low-level offenses.

While there has been much attention paid to the overt ways that our criminal-justice system has affected poor communities of color—both on the front end (policing) and on the back end (mass incarceration)—less attention has been directed toward what happens in the middle, when people are funneled through a confusing, bureaucratic court system that is designed to address minor crimes. Issa Kohler-Hausmann, a professor of sociology and law, helps bring this middle zone into focus in her new book, *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing*. As she compellingly demonstrates, just as the police and prisons play a central role in broken-windows policing, so, too, do the courts. “After a person is arrested as part of New York City’s famed Broken Windows enforcement, that person has to go somewhere,” Kohler-Hausmann writes. “And where that person goes is misdemeanorland.” The picture of this “jurisdictional and physical space” that Kohler-Hausmann paints is as abhorrent as it is mundane. The churning of hundreds of thousands of mostly black and brown New Yorkers through the courts has created a system of social control whose tendrils reach far into the daily lives of the people caught in its machinery.

**O**ne of the most striking things that Kohler-Hausmann points out: While misdemeanor arrests rose nearly fourfold between 1980 and 2010, very few of those arrested were actually convicted of any crime. In fact, someone arrested for a misdemeanor in the era of broken-windows policing has been less likely to be convicted than someone arrested for a misdemeanor in the decade prior to its implementation. And less than 1 percent of misdemeanor cases go to trial. All of which raises the question: If fewer people are being formally punished in “misdemeanorland,” then what’s happening to them instead?

Kohler-Hausmann argues that these people are facing what she terms “managerial justice,” or a system that tracks and regulates them in order to determine whether or not they can act as “responsible” citizens—that is, whether they can comply with the various tasks that the courts set out for them. Much of this is born of necessity, with prosecutors who primarily handle misdemeanors dealing with hundreds of cases at a time. But it also leads to a distinct form of social control in which citizens are “marked” by the courts as people who need to be “sort[ed] and classif[ied]” to determine how much state intervention is warranted. One way of doing this is to offer people who are charged with misdemeanors a conditional discharge. Known in the legal world as “adjournments in contemplation of dismissal” (ACDs), these discharges allow cases to be adjourned for a certain period of time without the court finding a person guilty or not of a crime. If the defendant stays out of trouble and fulfills whatever conditions the judge might set—community service, a drug-rehabilitation program—then, at the end of the set time period, the case will be dismissed and the records sealed. Between 45 and 66 percent of all marijuana-possession cases since 2004 have resulted in ACDs. It’s a quick and easy way to keep tabs on someone: As one judge put it, an ACD is essentially “a low-maintenance form of probation.” Those arrested for misdemeanors thus become “provisional suspects,” often regardless of whether or not they are guilty.

Kohler-Hausmann’s two other tenets of the managerial-justice model—“procedural hassle” and “performance”—then come into play. Depending on how defendants get past the various hurdles of the court system and how they perform when it comes to things like showing up for summonses and completing

community service, they may be further marked and monitored. This, in turn, affects how they will be managed through the system and whether judges will treat them more harshly or leniently in the future. One example of this process can be seen in a case which Kohler-Hausmann discusses in her book. When two women were arrested for assaulting each other, both asked for a mutual dismissal of the charges. Yet the assistant district attorney in charge of the case refused to drop it, even though everyone knew that it would eventually be dismissed, since neither woman would cooperate in prosecuting the other. One of the defense attorneys involved in the case asked, “You schlep them back here for three months of court appearances and then you dismiss it? What’s the point of that? Just to schlep them back here for months of court appearances?” To which the assistant district attorney replied: “Yup, that’s the point.”

Broken-windows policing may have been a purposeful political construction, a deliberate effort by police commissioners like Bratton to impose a zero-tolerance policy on communities of color. The managerial-justice model outlined by Kohler-Hausmann, on the other hand, developed as courts worked to adapt to the huge influx of cases they suddenly had to deal with. On its face, this system is certainly preferable to one in which a commensurate number of people end up with convictions and permanent criminal records. But as Kohler-Hausmann points out, while what the courts are doing might represent a “just approach to low-level rule breaking in the abstract,” this doesn’t mean the system is “just in practice.” Given that racist police strategies have moved a disproportionate number of black and brown people through the courts, even the most impartial system will only replicate racism down the chain. In addition, the very fact that there is an imperative for prosecutors and judges to “do something” rests on the assumption that the people arrested for misdemeanors deserve to be controlled in some way.

**K**ohler-Hausmann is both a lawyer and an academic, and thus much of her book is wonky. The average reader can easily get bogged down in the whirlwind of ACDs, arraignments, dispositions, 30.30s, and other legal jargon. But part of experiencing misdemeanorland as an arrestee is to be faced with this jargon day in and day out, with few resources to draw on to better interpret what it means. In her interviews with people who have had to navigate this world, Kohler-Hausmann captures just how terrifying and complicated the legal system can be for those caught up in it.

The inherent degradation of misdemeanorland seeps into nearly every aspect of its apparatus. First, there’s the arrest. Janelle, a young black college student, recounts how she was forcibly pulled off a bus after she didn’t pay the fare (she had just transferred from another bus and was rushing to get on). “They pushing me up against the bank and putting me on this wall, and if you don’t shut up we’re going to throw you on the floor. All of that for \$2.25.”

Then there’s the experience of those who are driven to the police station. Destiny, who was arrested for sex work, recounts being detained in a police van for hours with five or six other women while the plainclothes officers drove around and made other arrests. “You don’t know if you’re being kidnapped or if these guys are in fact the law,” she tells Kohler-Hausmann.

Next is the precinct holding cell, where defendants wait anywhere from three to 10 hours for their paperwork to be processed; then they are forced to wait again in holding cells in the arraignment courtroom. Many of the people who spoke to Kohler-Hausmann described standing for hours in their cell because it was too filthy to sit down in. The only food provided was a plastic-wrapped cheese sandwich. And when defendants finally

reach the courtroom, they are treated as second-class citizens. Kohler-Hausmann lists the restrictions put on defendants: “No cell phone use, including Internet use or texting. No talking. No standing. No sitting in the front row. No loud children. Some courtrooms impose a no reading requirement, or no reading of newspapers.” Attorneys and court officers, of course, can do all of these things.

There are also the hurdles purposely set out for defendants, which might seem relatively simple on their face—such as showing up to court or attending a weekly program—but which can end up being extremely burdensome for many New Yorkers. Finding someone to take care of your child or being able to miss a day of work just to be in court is no small thing, especially if you’re living paycheck to paycheck. The inability to pay court fees can also destroy your credit. For some misdemeanor arrests, your driver’s license can be suspended, severing a lifeline for anyone who depends on being able to drive to work. And an open police record—even if it’s just for a few months—can mean losing out on a job or an apartment.

All of this raises bigger questions: Why should the system be set up so that people arrested for a misdemeanor, even though they never go to trial, are held accountable to prosecutors and judges and required to demonstrate that they are good citizens? Why should policing that targets the poor be the centerpiece of a broken-windows program, instead of policies that might fix those windows and help address the very conditions in which these low-level crimes occur? Even the hurdles that people are asked to jump over are specifically difficult because of the compounding variables of race and class.

These questions end Kohler-Hausmann’s book. “It seems that we, as a political community, are comfortable relying on the instrumentalities of criminal law as the primary social control mechanisms in urban spaces of concentrated poverty and insecurity,” she writes in her final paragraph. But she doesn’t quite reach the point of offering any answers. We have set up a system in which people who have committed misdemeanors must answer for their smallest moral transgressions, while our society’s biggest problems continue to go unaddressed by policy-makers, even though doing so could actually ameliorate the root issues that cause people to commit (and be arrested for) small crimes. Parallel to a critique of misdemeanorland, we also need the promulgation of policies that prevent people from ending up there—and that means not just rolling back broken-windows policing but also the criminalization of poverty itself.

It might be easy to write off many of these individual indignities—not being able to talk on your phone in court, waiting for a day in a holding cell—as small matters that could be individually fixed. But *Misdemeanorland* demonstrates the need to think more structurally about what has gone wrong in American criminal justice, in which “not only policing and imprisonment but also the courts play a role in upholding an oppressive system.” The injustices detailed in Kohler-Hausmann’s book stem from the political and moral decisions outlined in “Police Strategy No. 5” more than two decades ago. To overturn it, there will need to be a similar rethinking of our political and moral priorities—and much of that work is beginning to happen. The question, in the end, is not how courts should respond to a flood of misdemeanor arrests; it’s whether misdemeanorland should be allowed to exist at all.